STATE OF MICHIGAN

COURT OF APPEALS

TINA HARGREAVES,

Plaintiff-Appellant,

v

GENOA LODGING, L.L.C.,

Defendant-Appellee.

UNPUBLISHED
August 12, 2004

No. 249433
Livingston Circuit Court
LC No. 02-019395-NO

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals of right from the trial court's grant of summary disposition in favor of defendant according to MCR 2.116(C)(10). We affirm.

As plaintiff was walking back to her hotel from breakfast at a nearby restaurant, she stepped in a depression in the concrete by the hotel's side entrance and fell. On appeal, plaintiff argues that the trial court erred when it granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10), because reasonable minds could differ about whether the danger was open and obvious. We disagree. A motion for summary disposition under MCR 2.116(C)(10) "tests the factual sufficiency of the complaint." *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). A motion for summary disposition should be granted when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id*. at 164; MCR 2.116(C)(10). The duty a possessor of land owes to an invitee "does not generally encompass removal of open and obvious dangers." *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). "Whether a danger is open and obvious depends upon whether it is reasonable to expect an average user with ordinary intelligence to discover the danger upon casual inspection." *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995).

Here, the trial judge reviewed photographs of the depression and other evidence regarding its dimensions and location. The evidence demonstrated that the relatively shallow depression existed to the side of the sloped walkway and formed around the perimeter of a level steel sewer cap. Photographs demonstrated that the contrasting cap visibly accentuated the depressed area as one walked up to the hotel entrance. The minor depression here legally resembles the defect described in *Lugo, supra*, where an individual stepped into a pothole in a parking lot and our Supreme Court dismissed the case after applying the open and obvious

doctrine. Under these circumstances, the trial court correctly applied *Lugo* and determined that the defect was open and obvious as a matter of law.

Plaintiff argues that the flaw was not open and obvious because she could not see the depression even though she was looking directly at the ground as she walked. Nevertheless, the question is not whether the defect was noticed by plaintiff – an eighty-seven year old who initially could not point out the depression in photographs. Rather, the issue is whether it was noticeable to the ordinary user upon casual inspection. *Eason, supra*. On this issue, plaintiff also offered a letter from the Livingston County building inspector and her expert's conclusory statement that the depression was an exception to the open and obvious doctrine. While the letter called the depression a "potential hazard," it did not discuss whether the concrete depression was noticeable to the ordinary user upon casual inspection. Therefore, it offered no genuine assistance to the court. However, defendant also offered other deposition evidence indicating that workers at the hotel never noticed the defect. While more relevant, this fact likely stemmed from the depression's location near the side of the walk, the easily avoided cap that marked the slight irregularity, and the area's generally unremarkable appearance. Therefore, the trial court properly assessed the evidence before it, especially the photographs of the actual site, and found that defendant had no duty to remedy this open and obvious condition.

Plaintiff argues that "special aspects" of the depression made it unreasonably dangerous, rendering the open and obvious doctrine inapplicable. We disagree. "Only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Lugo, supra* at 519. Ordinary open and obvious dangers like potholes in parking lots or cracks in driveways do not possess any special aspects that make them extraordinarily hazardous. *Id.* at 520. Because the slight depression near the sewer cap in this case fits squarely into this category of typical pavement features, the trial court correctly found no special aspects here.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Peter D. O'Connell